CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 228

Citations Affected: IC 4-12-8-2; IC 5-10-8-12; IC 12-15; IC 12-17.6-4-10; IC 27-8-30; IC 27-13-42; IC 35-48-2-1.

Synopsis: Prior authorization of drugs under Medicaid and CHIP. Conference committee report for ESB 228. Requires the children's health insurance program (CHIP) policy board to study certain children's benefits. Provides that this prohibition does not apply to a formulary or prior authorization program operated by a managed care organization under the Medicaid or CHIP programs. Establishes procedures to follow for requiring prior authorization for other drugs under the Medicaid and CHIP programs. Allows the office of Medicaid policy and planning (office) to place limits on quantities dispensed or the frequency of refills for any covered drug for the purpose of preventing fraud, abuse, waste, overutilization, or inappropriate utilization or to implement disease management. Establishes a therapeutics committee as a subcommittee of the drug utilization review (DUR) board and specifies committee membership and terms. Gives the DUR board additional duties. Makes changes to the law concerning the Indiana prescription drug account. Makes changes to the law concerning the Indiana prescription drug advisory committee. Requires the office to develop a waiver application to provide access to prescription drugs for low income senior citizens. Provides that money that was appropriated to the prescription drug account in 2000 but was not placed in the account is appropriated to the account. Requires the office to establish a point of sale system for the prescription drug program before July 1, 2002. Repeals the continuous eligibility provision for a child under Medicaid and removes the provision from CHIP. (This conference committee report deletes provisions that: (1) specified that a practitioner may prescribe a single source drug that is medically necessary; and (2) required formularies that are used by Medicaid managed care organizations to be uniform throughout the state. Adds provisions that: (1) prohibit the office from limiting the number of brand name prescription drugs a recipient may receive under Medicaid or CHIP; (2) allow the therapeutics committee to meet in executive committee under specified circumstances; (3) require the DUR board to determine whether a single source drug recently approved by the FDA will be included on the preferred drug list; (4) require the DUR board to review specified components of a Medicaid managed care organization's prescription drug formulary at least once a year and report on its findings; (5) add a psychiatrist with specified expertise to the controlled substances advisory committee and require the advisory committee to study specified material

and report on its findings; (6) make changes to the law concerning the Indiana prescription drug account; (7) make changes to the law concerning the Indiana prescription drug advisory committee; (8) require the office to develop a waiver application to provide access to prescription drugs for low income senior citizens; (9) provide that money that was appropriated to the prescription drug account in 2000 but was not placed in the account is appropriated to the account; (10) require the office to establish a point of sale system for the prescription drug program before July 1, 2002; and (11) make other changes.)

Effective: Upon passage; December 30, 2001 (retroactive); July 1, 2002.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 228 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-12-8-2, AS AMENDED BY P.L.291-2001, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The Indiana prescription drug account is established within the Indiana tobacco master settlement agreement fund for the purpose of providing access to needed prescription drugs to ensure the health and welfare of Indiana's low-income senior citizens. The account consists of:

(1) amounts to be distributed to the account from the Indiana tobacco master settlement agreement fund;

(2) appropriations to the account from other sources; ~~and~~

(3) **rebates:**

(A) required under 42 U.S.C. 1396r-8(a) for a Medicaid waiver under which a prescription drug program is established or implemented; or

(B) voluntarily negotiated under a prescription drug program that is established or implemented;

to provide access to prescription drugs for low income senior

citizens; and

(4) grants, gifts, and donations intended for deposit in the account.

(b) The account shall be administered by the budget agency. Expenses for administration and benefits under the Indiana prescription drug program established under IC 12-10-16 shall be paid from the account. Money in the account at the end of the state fiscal year does not revert to the state general fund **or the Indiana tobacco master settlement agreement fund** but **is annually appropriated and** remains available for expenditure **for a prescription drug program established or implemented to provide access to prescription drugs for low income senior citizens.**

(c) Money in the account may be used to match federal funds available under a Medicaid waiver under which a prescription drug program is established or implemented to provide access to prescription drugs for low income senior citizens.".

Page 2, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 3. IC 5-10-8-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 12. (a) As used in this section, "covered individual" means an individual who is covered under an employee health plan.**

(b) As used in this section, "employee health plan" means:

(1) a self-insurance program established under section 7(b) of this chapter; or

(2) a contract with a prepaid health care delivery plan entered into under section 7(c) of this chapter;

that provides a prescription drug benefit.

(c) The state personnel department may report to the drug utilization review board established by IC 12-15-35-19, not later than October 1 of each calendar year, the number of covered individuals who are:

(1) less than eighteen (18) years of age; and

(2) prescribed a stimulant medication approved by the federal Food and Drug Administration for the treatment of attention deficit disorder or attention deficit hyperactivity disorder.".

Page 3, delete lines 19 through 23.

Page 3, line 33, delete "IC 12-15-35.5-3." and insert "**IC 12-15-35.5-2.5.**".

Page 3, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 10. IC 12-15-5-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. The office may not limit the number of brand name prescription drugs a recipient may receive under the program.**

SECTION 11. IC 12-15-12-14, AS ADDED BY P.L.291-2001, SECTION 160, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. (a) This section applies to a Medicaid recipient: ~~who:~~

(1) **who** is determined by the office to be eligible for enrollment in a Medicaid managed care program; ~~and~~

(2) **whose Medicaid eligibility is not based on the individual's aged, blind, or disabled status; and**

(3) who resides in a county having a population of:

(A) more than ~~one hundred fifty thousand (150,000) but less than one hundred sixty thousand (160,000).~~ **one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000);**

(B) more than ~~one hundred sixty thousand (160,000) but less than two hundred thousand (200,000).~~ **one hundred seventy thousand (170,000) but less than one hundred eighty thousand (180,000);**

(C) more than two hundred thousand (200,000) but less than three hundred thousand (300,000);

(D) more than three hundred thousand (300,000) but less than four hundred thousand (400,000); or

(E) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Not later than January 1, 2003, the office shall require a recipient described in subsection (a) to enroll in the risk-based managed care program.

(c) The office:

(1) shall apply to the United States Department of Health and Human Services for any approval necessary; and

(2) may adopt rules under IC 4-22-2;

to implement this section.".

Page 5, line 12, delete "who is a Medicaid" and insert "**or a pharmacist whose only contract with the state is a Medicaid provider agreement under IC 12-15-11 or a provider agreement under the children's health insurance program under IC 12-17.6.**".

Page 5, delete line 13.

Page 5, line 19, delete "who is not a".

Page 5, line 20, delete "state employee".

Page 5, delete lines 27 through 32.

Page 5, line 33, delete "(k)" and insert "**(j)**".

Page 5, line 33, delete "the voting members" and insert "**a quorum of**".

Page 5, line 34, delete "appointed to".

Page 5, line 35, after "measure." insert "**A quorum of the therapeutics committee consists of four (4) members.**".

Page 5, line 36, delete "(l)" and insert "**(k)**".

Page 5, line 40, delete "(m)" and insert "**(l)**".

Page 6, line 4, delete "(n)" and insert "**(m)**".

Page 6, line 5, after "." insert "**However, the therapeutics committee may meet in executive session only for the purpose of reviewing confidential or proprietary information.**".

Page 7, line 38, after "the" insert "**primary care case management component of the**".

Page 8, line 9, after "list." insert "**The board shall also consider expert testimony in the development of a preferred drug list.**".

Page 8, line 17, delete "substantial" and insert "**primary**".

Page 8, line 23, delete "Notwithstanding a preferred drug list approved under" and insert "**Prior authorization is required for**

coverage under a program described in subsection (a)(11) of a drug that is not included on the preferred drug list.".

Page 8, delete lines 24 through 28.

Page 8, line 29, delete "A preferred drug list developed under subsection (a)(11)" and insert "**The board shall determine whether to include a single source covered outpatient drug that is newly approved by the federal Food and Drug Administration on the preferred drug list not later than sixty (60) days after the date of the drug's approval. However, if the board determines that there is inadequate information about the drug available to the board to make a determination, the board may have an additional sixty (60) days to make a determination from the date that the board receives adequate information to perform the board's review. Prior authorization may not be automatically required for a single source drug that is newly approved by the federal Food and Drug Administration and that is:**

(1) in a therapeutic classification:

(A) that has not been reviewed by the board; and

(B) for which prior authorization is not required; or

(2) the sole drug in a new therapeutic classification that has not been reviewed by the board.".

Page 8, delete lines 30 through 36.

Page 8, line 41, delete "not".

Page 9, line 1, delete "." and insert "**under the following circumstances:**

(A) To override a prospective drug utilization review alert.

(B) To permit reimbursement for a medically necessary brand name drug that is subject to generic substitution under IC 16-42-22-10.

(C) To prevent fraud, abuse, waste, overutilization, or inappropriate utilization.

(D) To permit implementation of a disease management program.

(E) To implement other initiatives permitted by state or federal law.".

Page 9, between lines 3 and 4, begin a new line block indented and insert:

"**(3) The office may add a new single source drug that has been approved by the federal Food and Drug Administration to the preferred drug list without prior approval from the board.**

(4) The board may add a new single source drug that has been approved by the federal Food and Drug Administration to the preferred drug list.".

Page 9, between lines 13 and 14, begin a new line block indented and insert:

"**(4) The number of times prior authorization was requested, and the number of times prior authorization was:**

(A) approved; and

(B) disapproved.".

Page 9, delete lines 17 through 22.

Page 9, line 32, delete "the voting members" and insert "**a quorum**".

Page 9, line 39, after "submit the" insert "**initial**".

Page 9, delete lines 41 through 42, begin a new paragraph and insert:

"**(b) Except as permitted under subsection (g), the office may not further restrict the status of a drug in the Medicaid program or the children's health insurance program until the board reviews a therapeutic classification and the office implements the therapeutic classification on the preferred drug list.**

(c) The office shall provide advance notice to providers of the contents of the preferred drug list submitted by the board under subsection (a).".

Page 10, delete lines 1 through 2.

Page 10, line 3, delete "(c) The" and insert "**(d) Notwithstanding IC 12-15-13-6, the**".

Page 10, line 6, delete "(d)" and insert "**(e)**".

Page 10, between lines 8 and 9, begin a new paragraph and insert:

"**(f) The office may not require prior authorization for a drug that is excluded from the preferred drug list unless the board has made the determinations required under section 35 of this chapter.**".

Page 10, line 9, delete "(e)" and insert "**(g)**".

Page 10, line 33, strike "thirty (30)" and insert "**fifteen (15)**".

Page 11, line 2, strike "thirty (30)" and insert "**fifteen (15)**".

Page 11, line 39, delete "Notwithstanding sections" and insert "**(a) The board shall review the prescription drug program of a managed care organization that participates in the state's risk-based managed care program at least one (1) time per year. The board's review of a prescription drug program must include the following:**

(1) An analysis of the single source drugs requiring prior authorization, including the number of drugs requiring prior authorization in comparison to other managed care organizations' prescription drug programs that participate in the state's Medicaid program.

(2) A determination and analysis of the number and the type of drugs subject to a restriction.

(3) A review of the rationale for:

(A) the prior authorization of a drug described in subdivision (1); and

(B) a restriction on a drug.

(4) A review of the number of requests a managed care organization received for prior authorization, including the number of times prior authorization was approved and the number of times prior authorization was disapproved.

(5) A review of:

(A) patient and provider satisfaction survey reports; and

(B) pharmacy-related grievance data for a twelve (12) month period.

(b) A managed care organization described in subsection (a) shall provide the board with the information necessary for the board to conduct its review under subsection (a).

(c) The board shall report to the select joint commission on

Medicaid oversight established by IC 2-5-26-3 at least one (1) time per year on the board's review under subsection (a).".

Page 11, delete lines 40 through 42.

Page 12, delete lines 1 through 42, begin a new paragraph and insert:

"SECTION 23. IC 12-15-35.5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. As used in this chapter, "unrestricted access" means the ability of a recipient to obtain a prescribed drug without being subject to limits or preferences imposed by the office or the board for the purpose of cost savings except as provided under IC 12-15-35-8 and section 7 of this chapter.**

SECTION 24. IC 12-15-35.5-4, AS ADDED BY HEA 1233-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Sec. 4. Prior authorization requirements developed under this chapter must:

(1) comply with all applicable state and federal laws, including the provisions of 405 IAC 5-3 and 42 U.S.C. 1396r-8(d)(5); and

(2) provide that the prior authorization number assigned to an approved request be included on the prescription or drug order:

(A) issued by the prescribing ~~physician;~~ **practitioner;** or

(B) if the prescription is transmitted orally, relayed to the dispensing pharmacist by the prescribing ~~physician.~~ **practitioner.**".

Delete page 13.

Page 14, delete lines 1 through 15, begin a new paragraph and insert:

"SECTION 25. IC 12-17.6-3-3, AS ADDED BY P.L.273-1999, SECTION 177, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Subject to subsection (b), a child who is eligible for the program shall receive services from the program until the earlier of the following:

(1) ~~The end of a period of twelve (12) consecutive months following the determination of the child's eligibility for the program.~~ **The child becomes financially ineligible.**

(2) The child becomes nineteen (19) years of age.

(b) Subsection (a) applies only if the child and the child's family comply with enrollment requirements.".

Page 14, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 27. IC 12-17.6-4-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. The office may not limit the number of brand name prescription drugs a recipient may receive under the program.**".

Page 14, line 28, delete "." and insert "**, and whose practice agreement with a collaborating physician reflects the conditions specified in subsection (b).**".

Page 14, line 29, delete "psychotropic" and insert "**stimulant**".

Page 14, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 29. IC 27-8-30 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2002]:

Chapter 30. Specific Accident and Sickness Insurance Reporting Requirements

Sec. 1. As used in this chapter, "accident and sickness insurance policy" means a policy that:

(1) provides the kinds of coverage described in Class 1(b) or Class 2(a) of IC 27-1-5-1; and

(2) includes a prescription drug benefit.

Sec. 2. As used in this chapter, "covered individual" means an individual who is covered under an accident and sickness insurance policy.

Sec. 3. An insurer that issues an accident and sickness insurance policy may report to the drug utilization review board established by IC 12-15-35-19 the number of covered individuals who are:

(1) less than eighteen (18) years of age; and

(2) prescribed a stimulant medication approved by the federal Food and Drug Administration for the treatment of attention deficit disorder or attention deficit hyperactivity disorder.

SECTION 30. IC 27-13-42 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 42. Specific Reporting Requirements

Sec. 1. A health maintenance organization that enters into an individual contract or a group contract that provides a prescription drug benefit may report to the drug utilization review board established by IC 12-15-35-19, not later than October 1 of each calendar year, the number of enrollees who are:

(1) less than eighteen (18) years of age; and

(2) prescribed a stimulant medication approved by the federal Food and Drug Administration for the treatment of attention deficit disorder or attention deficit hyperactivity disorder.

SECTION 31. IC 35-48-2-1, AS AMENDED BY P.L.14-2000, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The board shall administer this article and may recommend to the general assembly the addition, deletion, or rescheduling of all substances listed in the schedules in sections 4, 6, 8, 10, and 12 of this chapter by submitting a report of such recommendations to the legislative council. In making a determination regarding a substance, the board shall consider the following:

(1) The actual or relative potential for abuse.

(2) The scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the substance.

(4) The history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

(6) The risk to public health.

(7) The potential of the substance to produce psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the

board shall make findings and recommendations concerning the control of the substance if it finds the substance has a potential for abuse.

(c) If the board finds that a substance is an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated or rescheduled to a more restrictive schedule as a controlled substance under federal law and notice is given to the board, the board shall recommend similar control of the substance under this article in the board's report to the general assembly, unless the board objects to inclusion or rescheduling. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its findings.

(e) If a substance is rescheduled to a less restrictive schedule or deleted as a controlled substance under federal law, the substance is rescheduled or deleted under this article. If the board objects to inclusion, rescheduling, or deletion of the substance, the board shall notify the chairman of the legislative council not more than thirty (30) days after the federal law is changed and the substance may not be rescheduled or deleted until the conclusion of the next complete session of the general assembly. The notice from the board to the chairman of the legislative council must be published.

(f) There is established a ~~fifteen (15)~~ **sixteen (16)** member controlled substances advisory committee to serve as a consultative and advising body to the board in all matters relating to the classification, reclassification, addition to, or deletion from of all substances classified as controlled substances in schedules I to IV or substances not controlled or yet to come into being. In addition, the advisory committee shall conduct hearings and make recommendations to the board regarding revocations, suspensions, and restrictions of registrations as provided in IC 35-48-3-4. All hearings shall be conducted in accordance with IC 4-21.5-3. The advisory committee shall be made up of:

(1) two (2) physicians licensed under IC 25-22.5, one (1) to be elected by the medical licensing board of Indiana from among its members and one (1) to be appointed by the governor;

(2) two (2) pharmacists, one (1) to be elected by the state board of pharmacy from among its members and one (1) to be appointed by the governor;

(3) two (2) dentists, one (1) to be elected by the state board of dentistry from among its members and one (1) to be appointed by the governor;

(4) the state toxicologist or the designee of the state toxicologist;

(5) two (2) veterinarians, one (1) to be elected by the state board of veterinary medical examiners from among its members and one (1) to be appointed by the governor;

(6) one (1) podiatrist to be elected by the board of podiatric medicine from among its members;

(7) one (1) advanced practice nurse with authority to prescribe legend drugs as provided by IC 25-23-1-19.5 who is:

(A) elected by the state board of nursing from among the board's members; or

(B) if a board member does not meet the requirements under IC 25-23-1-19.5 at the time of the vacancy on the advisory committee, appointed by the governor;

(8) the superintendent of the state police department or the superintendent's designee; ~~and~~

(9) three (3) members appointed by the governor who have demonstrated expertise concerning controlled substances; **and**

(10) one (1) member appointed by the governor who is a psychiatrist with expertise in child and adolescent psychiatry.

(g) All members of the advisory committee elected by a board shall serve a term of one (1) year and all members of the advisory committee appointed by the governor shall serve a term of four (4) years. Any elected or appointed member of the advisory committee, may be removed for cause by the authority electing or appointing the member. If a vacancy occurs on the advisory committee, the authority electing or appointing the vacating member shall elect or appoint a successor to serve the unexpired term of the vacating member. The board shall acquire the recommendations of the advisory committee pursuant to administration over the controlled substances to be or not to be included in schedules I to V, especially in the implementation of scheduled substances changes as provided in subsection (d).

(h) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, as those terms are defined or used in IC 7.1, or to tobacco.

(i) The board shall exclude any nonnarcotic substance from a schedule if that substance may, under the Federal Food, Drug, and Cosmetic Act or state law, be sold over the counter without a prescription.

SECTION 32. IC 12-15-2-15.7 IS REPEALED [EFFECTIVE JULY 1, 2002].

SECTION 33. [EFFECTIVE JULY 1, 2002] **(a) As used in this SECTION, "advisory committee" refers to the controlled substances advisory committee established by IC 35-48-2-1(f), as amended by this act.**

(b) The advisory committee shall review the records maintained for the previous year by the central repository for controlled substances designated by the state police department under IC 35-48-7-10 regarding the prescribing of stimulant medications approved by the federal Food and Drug Administration for the treatment of attention deficit disorder or attention deficit hyperactivity for children less than eighteen (18) years of age.

(c) Not later than October 1, 2002, the advisory committee shall submit a report containing information obtained under subsection (b) to the drug utilization review board established by IC 12-15-35-19.

(d) The report required under subsection (c) may not contain any information that:

(1) may be used to identify a child for whom a stimulant medication was prescribed; or

(2) indicates that a particular physician's prescribing of stimulant medications to a child was inappropriate.

(e) Any meeting held by the advisory committee to comply with this SECTION is not open to the public.

(f) Unless otherwise provided by law, records reviewed by the advisory committee to comply with this SECTION are not public records.

(g) The drug utilization review board shall review:

(1) the report submitted under subsection (c);

(2) information submitted under:

(A) IC 5-10-8-12, as added by this act;

(B) IC 27-8-30, as added by this act; and

(C) IC 27-13-42, as added by this act;

(3) information submitted by the office of Medicaid policy and planning regarding the prescribing of stimulant medications approved by the federal Food and Drug Administration for the treatment of attention deficit disorder and attention deficit hyperactivity disorder for children less than eighteen (18) years of age who participate in:

(A) Medicaid under IC 12-15; or

(B) the children's health insurance program under IC 12-17.6; and

(4) any other relevant information concerning the prescribing of stimulant medications approved by the federal Food and Drug Administration for the treatment of attention deficit disorder or attention deficit hyperactivity for children less than eighteen (18) years of age.

(h) Before December 31, 2002, the drug utilization review board shall submit a report analyzing the information reviewed under subsection (g) to the following:

(1) The select joint commission on Medicaid oversight established by IC 2-5-26-3.

(2) The legislative council.

(3) The medical licensing board of Indiana established by IC 25-22.5-2-1.

(i) The report required under subsection (h) must include the following:

(1) A comparison of the percentage of children receiving prescriptions for stimulant medications who are:

(A) participating in Medicaid (IC 12-15) or the children's health insurance program (IC 12-17.6); and

(B) not participating in a program described in clause (A).

(2) Scientifically determined estimates of the prevalence of major disorders in children who are treated with stimulant medications.

(3) A statement by the advisory committee regarding whether the information provided under subdivisions (1) and (2) indicates that stimulant medications are being disproportionately prescribed for children described in subdivision (1)(A).

(4) Identification of any pattern of prescribing of stimulant

medications for children contrary to the most recent guidelines adopted by the American Academy of Pediatrics and the American Academy of Child and Adolescent Psychiatry.

(j) This SECTION expires December 31, 2002.

SECTION 34. [EFFECTIVE UPON PASSAGE] **(a) The governor shall appoint a psychiatrist with expertise in child and adolescent psychiatry as an additional member of the controlled substances advisory committee under IC 35-48-2-1, as amended by this act, before July 1, 2002.**

(b) This SECTION expires July 1, 2002.

SECTION 35. [EFFECTIVE DECEMBER 30, 2001 (RETROACTIVE)]: **(a) The Indiana prescription drug advisory committee is established to:**

(1) study pharmacy benefit programs and proposals, including programs and proposals in other states;

(2) make initial and ongoing recommendations to the governor for programs that address the pharmaceutical costs of low-income senior citizens; and

(3) review and approve changes to a prescription drug program that is established or implemented under a Medicaid waiver that uses money from the Indiana prescription drug account established under IC 4-12-8-2.

(b) The committee consists of eleven (11) members appointed by the governor and four (4) legislative members. Members serving on the committee established by P.L.291-2001, SECTION 81, before its expiration on December 31, 2001, continue to serve. The term of each member expires December 31, 2005. The members of the committee appointed by the governor are as follows:

(1) A physician with a specialty in geriatrics.

(2) A pharmacist.

(3) A person with expertise in health plan administration.

(4) A representative of an area agency on aging.

(5) A consumer representative from a senior citizen advocacy organization.

(6) A person with expertise in and knowledge of the federal Medicare program.

(7) A health care economist.

(8) A person representing a pharmaceutical research and manufacturing association.

(9) Three (3) other members as appointed by the governor.

The four (4) legislative members shall serve as nonvoting members. The speaker of the house of representatives and the president pro tempore of the senate shall each appoint two (2) legislative members, who may not be from the same political party, to serve on the committee.

(c) The governor shall designate a member to serve as chairperson. A vacancy with respect to a member shall be filled in the same manner as the original appointment. Each member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties. The expenses of the committee shall be paid from the Indiana

prescription drug account created by IC 4-12-8. The office of the secretary of family and social services shall provide staff for the committee. The committee is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3. The committee is a governing body for purposes of IC 5-14-1.5.

(d) Not later than September 1, 2004, the committee shall make program design recommendations to the governor and the family and social services administration concerning the following:

(1) Eligibility criteria, including the desirability of incorporating an income factor based on the federal poverty level.

(2) Benefit structure.

(3) Cost-sharing requirements, including whether the program should include a requirement for copayments or premium payments.

(4) Marketing and outreach strategies.

(5) Administrative structure and delivery systems.

(6) Evaluation.

(e) The recommendations shall address the following:

(1) Cost-effectiveness of program design.

(2) Coordination with existing pharmaceutical assistance programs.

(3) Strategies to minimize crowd-out of private insurance.

(4) Reasonable balance between maximum eligibility levels and maximum benefit levels.

(5) Feasibility of a health care subsidy program where the amount of the subsidy is based on income.

(6) Advisability of entering into contracts with health insurance companies to administer the program.

(f) The committee may not recommend the use of funds from the Indiana prescription drug account for a state prescription drug benefit for low-income senior citizens if there is a federal statute or program, other than a federal Medicaid waiver, providing a similar prescription drug benefit for the benefit of low-income senior citizens.

(g) This SECTION expires December 31, 2005.

SECTION 36. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning.**

(b) The office shall develop a federal Medicaid waiver application under which a prescription drug program may be established or implemented to provide access to prescription drugs for low-income senior citizens.

(c) Before the office may submit an application for a federal Medicaid waiver that will have an effect on the Indiana prescription drug program established under IC 12-10-16, the following must occur:

(1) The office shall submit the proposed Medicaid waiver to the prescription drug advisory committee established under this act.

(2) The prescription drug advisory committee must review,

allow public comment, and approve the proposed Medicaid waiver.

(d) A prescription drug program established or implemented by the office or a contractor of the office under this SECTION may only limit access to prescription drugs for prescription drug program recipients to the extent that restrictions are in place in the Medicaid program on the date of enactment of this act.

(e) Changes to a prescription drug program that:

(1) is established or implemented by the office or a contractor of the office under this SECTION; and

(2) uses money from the Indiana prescription drug account established under IC 4-12-8-2;

must be approved by the prescription drug advisory committee established under this act.

(f) Before July 1, 2002, the office shall apply to the United States Department of Health and Human Services for approval of any waiver necessary under the federal Medicaid program to provide access to prescription drugs for low income senior citizens.

(g) A Medicaid waiver developed under this SECTION must limit a prescription drug program's state expenditures to funding appropriated to the Indiana prescription drug account established under IC 4-12-8-2 from the Indiana tobacco master settlement agreement fund.

(h) The office may not implement a waiver under this SECTION until the office files an affidavit with the governor attesting that the federal waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(i) If the office receives a waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (f), the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.

SECTION 37. [EFFECTIVE UPON PASSAGE] **(a) There is appropriated from the Indiana tobacco master settlement agreement fund (IC 4-12-1-14.3) fifteen million five hundred sixteen thousand six hundred eighteen dollars ($15,516,618) to the Indiana prescription drug account established under IC 4-12-8-2. The budget agency shall allot the money appropriated under this subsection for the Indiana prescription drug account.**

(b) Notwithstanding IC 4-12-1-14.3, the amount appropriated under subsection (a) is the remainder of the amount appropriated under P.L.21-2000, SECTION 12 for the Indiana prescription drug program that was not placed in the Indiana prescription drug account and does not count against the maximum amount of expenditures, transfers, or distributions that may be made from the Indiana tobacco master settlement agreement fund during the state fiscal year.

(c) This SECTION expires July 1, 2004.

SECTION 38. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "office" refers to the office of the secretary of family**

and social services.

(b) As used in this SECTION, "point of sale system" means a system that uses an electronic hardware device that is:

(1) operated by a pharmacist on behalf of the office; and

(2) capable of:

(A) reading information on a card that is issued by the office; and

(B) providing an immediate prescription drug benefit to the eligible recipient.

(c) Before July 1, 2002, the office shall establish and implement a point of sale system for the Indiana prescription drug program established under IC 12-10-16.

(d) This SECTION expires July 1, 2002.

SECTION 39. [EFFECTIVE JULY 1, 2002] **(a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established under IC 12-8-6-1.**

(b) Before September 1, 2002, the office shall apply to the United States Department of Health and Human Services to do the following:

(1) Amend the state's waiver under 42 U.S.C. 1396n(b)(1) to include the aged, blind, and disabled in the managed care program under IC 12-15-12.

(2) Amend the state Medicaid plan in accordance with this act.

(c) The office may not implement the amendments under subsection (b) until the office files an affidavit with the governor attesting that the amendments applied for under this SECTION have been approved. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the amendments are approved.

(d) If the United States Department of Health and Human Services approves the amendments applied for under this SECTION and the governor receives the affidavit filed under subsection (c), the office shall implement the amendments not more than sixty (60) days after the governor receives the affidavit.

(e) The office may adopt rules under IC 4-22-2 to implement this SECTION.

(f) This SECTION expires December 31, 2008.".

Renumber all SECTIONS consecutively.

(Reference is to ESB 228 as reprinted February 26, 2002.)

Conference Committee Report
on
Engrossed Senate Bill 228

Signed by:

Senator Miller Chairperson	Representative Brown C
Senator Breaux	Representative Dillon
Senate Conferees	**House Conferees**